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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Scott Johnson,

Plaintiff,

v.

Danny B. Luong, in individual and representative capacity as trustee of The Luong/Wong Family Revocable Trust Of August 21, 1999; **Diana Wong**, in individual and representative capacity as trustee of The Luong/Wong Family Revocable Trust Of August 21, 1999; and Does 1-10,

Defendants.

Case No. 4:20-cv-00121-YGR

**POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANTS'
MOTION TO (A) DISMISS
FEDERAL CLAIM PURSUANT
TO FRCP 12(b)(1); AND (B) TO
DISMISS STATE CLAIMS
PURSUANT TO FRCP 12(b)(1),
12(h)(3), and 28 USC §1367(c)**

Honorable Yvonne Gonzalez Rogers

Oakland Courthouse

Courtroom 1 – 4th Floor

1301 Clay Street

Oakland, CA 94612

Date: Tuesday, March 31, 2020

Time: 2:00 p.m.

To Plaintiff and his attorneys of record:

Defendants Danny B. Luong and Diana Wong (“**Defendants**”) herewith submits their points and authorities in support of their motion to dismiss Plaintiff’s federal claim pursuant to Federal Rule of Civil Procedure (“**FRCP**”) 12(b)(1) on the grounds that the Court lacks subject matter jurisdiction; and dismissing Plaintiff’s state claim pursuant to FRCP 12(b)(1), 12(h)(3), and 28 USC §1367(c).

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I.

INTRODUCTION AND SUMMARY

On January 6, 2020, Plaintiff Scott Johnson (“**Johnson**” or “**Plaintiff**”), through his attorneys of record, filed his complaint alleging violations of the Americans with Disabilities Act (“**ADA**”) and related state claims. The claims were based literally on two “drive-bys” in May 2019 and June 2019 coupled with the vague claim “*on information and belief*” that Defendants did not provide accessible parking. (Doc. 1 (complaint) at ¶¶8, 11-15).

Of course, Plaintiff’s claims do not come close to meeting his requirement to specifically plead architectural barriers related to his disability.

The core of Defendants’ motion to dismiss is that there are no barriers relating to his alleged disability as (vaguely) described in the complaint.

Plaintiff’s attorneys were made aware of as much but have chosen to maintain their lawsuit,

presumably (a) hoping they can find some other “barrier” of which Johnson is unaware to perpetuate the litigation; and (b) hoping Defendants will just throw settlement money at Plaintiff and his attorneys to go away.

Plaintiff and his counsel know the federal claim is moot There is no federal controversy and no grounds for adjudicating Plaintiff’s state claims.



1 II.

2 LEGAL FRAMEWORK FOR THIS MOTION TO DISMISS

3 1. MOTION TO DISMISS UNDER 12(B)(1)

4 Under Rule 12 of the Federal Rules of Civil Procedure, a party may move to
5 dismiss a claim based on the court's lack of subject matter jurisdiction. See
6 FED.R.CIV.P. 12(b)(1); *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567
7 (2004).

8 Because plaintiff bears the burden of establishing subject matter jurisdiction
9 (see *Kokkonen v. Guardian Life Ins. Co. of Am.*, 114 S. Ct. 1673, 1675 (1994), no
10 presumption of truthfulness attaches to the allegations of plaintiff's complaint and
11 the Court must presume it lacks jurisdiction until plaintiff establishes jurisdiction.
12 *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). "A
13 federal court is presumed to lack jurisdiction in a particular case unless the contra-
14 ry affirmatively appears." *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221,
15 1225 (9th Cir. 1989) (citation omitted). "Article III of the Constitution confines the
16 federal courts to adjudication of actual 'Cases' and 'Controversies.'" *Lujan v. De-*
17 *fenders of Wildlife*, 504 U.S. 555, 590 (1992). "[T]he core component of standing
18 is an essential and unchanging part of the case-or-controversy requirement of Arti-
19 cle III." *Id.* at 560 (citation omitted). Consequently, a case that lacks Article III
20 standing must be dismissed for lack of subject matter jurisdiction. See *Maya v.*
21 *Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011).

22 Because standing is essential for a federal court to have subject matter juris-
23 diction, the issue of standing is properly raised in a 12(b)(1) motion to dismiss.
24 *Chandler v. State Farm Mut. Auto Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010)
25 (citations omitted).

26 Even at the initial pleading stage, plaintiffs bear the burden of establishing
27 the court's subject matter jurisdiction. California Practice Guide, Federal Civil
28 Procedure Before Trial, §9:77.10. The Ninth Circuit has held: "federal courts are

1 required, sua sponte, to examine jurisdictional issues.” *B.C. by and through Pow-*
 2 *ers v. Plumas Unified School District*, 192 F.3d 1260, 1264 (C.A. 9th 1999).

3 “A motion to dismiss for lack of subject matter jurisdiction may either attack
 4 the allegations of the complaint or may be made as a ‘speaking motion’ attacking
 5 the existence of subject matter jurisdiction in fact.” *Thornhill Publishing Co. v.*
 6 *General Tel & Elect.*, 594 F.2d 730, 733 (9th Cir. 1979); see also FED.R.CIV.P.
 7 12(b)(1).

8 “Unlike a Rule 12(b)(6) motion, a Rule 12(b)(1) motion can attack the sub-
 9 stance of a complaint’s jurisdictional allegations despite their formal sufficiency,
 10 and in doing so rely on affidavits or any other evidence properly before the court.”
 11 *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) (emphasis added).
 12 Thus, the existence of disputed material facts will not preclude the trial court from
 13 evaluating for itself the merits of jurisdictional claims. *Id.*

14 Defendants’ motion presents a factual challenge to subject matter jurisdic-
 15 tion. In a factual attack, the challenger provides evidence that an alleged fact in the
 16 complaint is false, thereby resulting in a lack of subject matter jurisdiction. *Safe*
 17 *Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Therefore, under a
 18 factual attack, the allegations in the complaint are not presumed to be true and “the
 19 district court is not restricted to the face of the pleadings, but may review any evi-
 20 dence, such as affidavits and testimony, to resolve factual disputes concerning the
 21 existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir.
 22 1988). *Thornhill*, 594 F.2d at 733.

23 “Once the moving party has converted the motion to dismiss into a factual
 24 motion by presenting affidavits or other evidence properly brought before the
 25 court, the party opposing the motion must furnish affidavits or other evidence nec-
 26 essary to satisfy its burden of establishing subject matter jurisdiction.” *Savage v.*
 27 *Glendale Union High Sch.*, 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003).

2. **SUPPLEMENTAL JURISDICTION UNDER 29 U.S.C. §1367**

Section 1367(c)(4) allows a district court to use its discretion to decline to exercise supplemental jurisdiction if “in exceptional circumstances, there are other compelling reasons for declining jurisdiction.” 29 U.S.C. §1367(c)(4). “[P]endant jurisdiction is a doctrine of discretion, not of plaintiff’s right.” *City of Chicago v. Int’l College of Surgeons*, 522 U.S. 156, 172 (1997). Subject matter jurisdiction over Plaintiff’s state law claims rests upon supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

III.

RELEVANT FACTS

1. SUMMARY OF PROCEEDINGS AND CLAIMS

A. Summary of Proceedings and Relevant Claims

Plaintiff alleges he “went to the property to visit ABC Printing in May 2019 and June 2019.” (Doc. 1, ¶8) He was apparently so concerned about access that he waited 8 months from the first “visit” during which time, without giving any notice (Luong Decl., ¶4), he visited – drove by – again, presumably to run up the “value” of his state-law claim.

On January 6, 2020, Plaintiff filed his complaint alleging violations of the ADA and related state claims based on the two alleged visits. The claims were based on one single vaguely described architectural barrier – a non-compliant accessible parking space.

11. On information and belief the defendants currently fail to provide accessible parking.

12. These barriers relate to and impact the plaintiff’s disability. Plaintiff personally encountered these barriers.

13. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

14. The lack of accessible facilities created difficulty and discomfort for the Plaintiff.

15. The defendants have failed to maintain in working and useable conditions those features required to provide ready access to persons with disabilities.

(Doc. 1 (complaint) at ¶¶11-15).

1 **2. PORTIONS OF THE PROPERTY TARGETED BY THE COMPLAINT COMPLY**
2 **WITH ADA REQUIREMENTS**

3 The complaint targets one specific location of the property – the parking lot
4 in which a van accessible parking space in the parking lot.

5 Prior to February 2020, there was signage indicating the presence of a van
6 accessible space, a level space and access aisle, and a beautifully poured path of
7 travel. The paint had faded over a great number of years but was nevertheless suf-
8 ficiently present to demonstrate the spaces’ presence.

9 On January 20, 2020, the parking was inspected. (Lobnow Decl., ¶4; Exh 1).

10 In late January 2020, the van accessible space and access aisle were re-
11 striped. The signage was also replaced. (Luong Decl., ¶5; Exh. 2). The accessible
12 space and access aisle are 18 feet long, and each 9 feet wide, meeting or exceeding
13 federal requirements. (Luong Decl., ¶6; Exh. 2) No other portions of the property
14 are the subject of any claims by Plaintiff.

15 **3. PLAINTIFF’S KNOWLEDGE OF THE ACTUAL CONDITIONS OF THE PROPERTY**
16 **AND SUMMARY OF UNSUCCESSFUL EFFORTS TO MEET AND CONFER**

17 On February 4, 2020, in the course of meeting and conferring regarding the
18 claims against Defendants, Defendants’ counsel sent to Plaintiff’s counsel excerpts
19 of the Lobnow inspection report as well as photographs showing the restriping
20 with dimensions. (Abraham Decl., ¶3; Exh. 3) Plaintiff’s counsel stated she would
21 respond upon review (Abraham Decl., ¶4) but has not done so, thereby necessitat-
22 ing the filing of this motion. (Abraham Decl., ¶5)

23 **IV.**

24 **DISCUSSION**

25 **1. THE FEDERAL ADA CLAIM IS MOOT AND CANNOT SERVE AS A BASIS FOR**
26 **FEDERAL JURISDICTION**

27 **A. Federal Courts Only Hear Actual Cases or Controversies**

28 Under Article II of the United States Constitution, federal courts may only

1 adjudicate actual cases or controversies, where true adversarial interests give rise
2 to a clear and concrete conflict. *Flast v. Cohen*, 392 U.S. 83, 96-97 (1968).

3 This issue is one of standing and mootness. Standing, in the jurisdictional
4 sense is based on the facts as they exist at the time the complaint is filed. *Mangual*
5 *v. Rotger-Sabat*, 317 F.3d 45, 58 (1st Cir. 2003). However, a plaintiff's stake is not
6 frozen at the moment the lawsuit is filed. As part of the actual case or controversy
7 requirement, he must maintain a personal interest in the outcome throughout the
8 litigation (15 MOORE'S FEDERAL PRACTICE § 102.32 (Matthew Bender 3rd ed.)),
9 or the controversy becomes moot and nonjusticiable despite the court's retention of
10 subject matter jurisdiction. *Steir v. Girl Scouts of the USA*, 383 F.3d 7, 18 (1st Cir.
11 2004); *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990) (holding that
12 parties must maintain a personal stake in the litigation throughout trial and appeal).
13 Courts are required to examine *sua sponte* jurisdictional issues such as standing.
14 See *BC by & Through Powers, supra*, 192 F.3d at 1264.

15 In order to establish and maintain standing to bring suit, a plaintiff bears the
16 burden of showing: (1) injury-in-fact, or the invasion of a legally protected interest,
17 that is both (a) concrete and particularized and (b) actual or imminent; (2) causal
18 connection between the injury and the conduct complained of; and (3) likelihood
19 that a favorable decision will redress the wrong. *Lujan v. Defenders of Wildlife*,
20 504 U.S. 555, 560 (1992). To demonstrate that a case is moot, the Defendants must
21 show that the issues involved are no longer "live" or that the parties lack a legally
22 cognizable interest in the outcome. *County of Los Angeles v. Davis*, 44 U.S. 625,
23 631 (1979). As discussed below, there is no "live" interest supporting retention of
24 federal jurisdiction.

25 **B. Plaintiffs Cannot Establish Standing Under Federal Law**

26 Where an ADA plaintiff seeks to establish standing to sue for injunctive re-
27 lief by the first method-showing an injury-in-fact plus an intent to return-the plain-
28 tiff must demonstrate "a real and immediate threat of repeated injury." *Chapman v.*

Pier 1 Imports (U.S.) Inc., 631 F.3d 939, 948 (9th Cir. 2011) “Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief ... if unaccompanied by any continuing, present adverse effects.” *Harris v. Del Taco, Inc.*, 396 F.Supp.2d 1107, 1113 (C.D. Cal. 2005) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). “In determining whether a plaintiff’s likelihood of returning to a defendant is sufficient to confer standing, courts have examined factors such as (1) the proximity of the place of public accommodation to plaintiff’s residence, (2) plaintiffs past patronage of Defendants’ business, (3) the definitiveness of plaintiffs plans to return, and (4) the plaintiffs frequency of travel near defendant.” *Feezor v. Sears, Roebuck & Co.*, No. CIV. S-10-0908 KJM, 2012 WL 4510950, at *4 (E.D. Cal. Sept. 30, 2012) *aff’d*, 608 F. App’x 476 (9th Cir. 2015) (internal quotation marks and citations omitted).

Here, the record weighs heavily against finding standing because the only conditions alleged in the amended complaint – the sole grounds for invoking of this Court’s jurisdiction – do not exist.

C. There is no Longer any Basis for Relief under the ADA

1. There must be a Continuing Right to Injunctive Relief

Under the ADA, a plaintiff must establish standing sufficient to seek injunctive relief. See 42 U.S.C. § 12188(a) (stating that the available remedies are those set forth in section 2000a-3(a), that only provides for injunctive relief to private parties). See also *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002). A plaintiff is only entitled to injunctive relief under the ADA if he is “being subjected to discrimination on the basis of disability ... or ... has reasonable grounds for believing [he] is about to be subjected to discrimination.” *Id.* at (a)(1) (emphasis added). The relevant issues here are (1) whether Plaintiff has reasonable grounds for current deterrence, and (2) whether Plaintiff remains currently deterred, from returning to Defendants’ premises.

Plaintiff’s federal claim falls short for two reasons: (1) Plaintiff lacks “rea-

1 sonable grounds” for being deterred from Defendants’ plaza based on the condi-
 2 tions of the plaza because those prior conditions do not exist (if they indeed ever
 3 did); and (2) Plaintiff cannot show that he still intends to return to Defendants’ pla-
 4 za and is currently deterred from doing so.

5 When a plaintiff seeks injunctive relief in anticipation of future injury, the
 6 Supreme Court has held that exposure to past illegal conduct does not give rise to
 7 an actual or imminent injury unless there are “continuing, present adverse effects”
 8 and a plaintiff shows that “there is a real and immediate threat of repeated injury.”
 9 *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (emphasis added), quoting
 10 *O’Shea v. Littleton*, 414 U.S. 488, 495-6 (1974). In this case, Plaintiff’s complaint
 11 alleges injury in the form of deterrence and seeks injunctive relief to remedy the
 12 same. Past exposure to illegal conduct does not in itself show a present case or
 13 controversy regarding injunctive relief if unaccompanied by any continuing, pre-
 14 sent adverse effects. *O’Shea*, 414 U.S. at 495-496.

15 The facts in support of this motion demonstrate that the cause of the injury is
 16 gone and not likely to return or reoccur. The parking lot, including parking spaces
 17 and access aisle, is compliant. Ramps and curb cuts are compliant. Accordingly,
 18 there is no need for this court to issue any injunctive relief – certainly not as relates
 19 to these Defendants – as there is no reasonable possibility that Plaintiff will be the
 20 subject of discrimination as alleged.

21 **2. Plaintiff Cannot Claim Deterrence Based on Nonexistent** 22 **Conditions**

23 Once injunctive relief claims are resolved, the federal claims are moot. *In-*
 24 *dependent Living Resources v. Oregon Arena Corp.*, 982 F.Supp. 698, 771 (1997);
 25 *Dufresne v. Veneman*, 114 F.3d 952, 953-954 (9th Cir. 1997); *Pickern v. Best*
 26 *Western Cove Lodge Marina Resort*, 194 F.Supp.2d 1128, 1130 (E.D. Cal. 2002).
 27 There are no reasonable grounds for fear by Plaintiff that there are or will be any
 28 barriers proscribed under the ADA – if there ever were.

1 Standing based on deterrence requires not only a showing of “discriminatory
2 conditions” but also that a “plaintiff is aware of [the conditions] and remains de-
3 terred.” *Pickern*, 293 F.3d at 1137 (emphasis added); *see also Moreno v. G&M Oil*
4 *Co.*, 88 F.Supp.2d 1116 (C.D. Cal. 2000).

5 There is no case or controversy here where the entirety of the claim assumes
6 that a condition that does not exist.

7 **2. THIS COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL**
8 **JURISDICTION OVER THE REMAINING STATE CLAIMS**

9 **A. Long-Standing Principles of Jurisprudence Warrant Declining to**
10 **Exercise Supplemental Jurisdiction in this Case**

11 Section 1367(c)(4) allows a district court to use its discretion to decline to
12 exercise supplemental jurisdiction if “in exceptional circumstances, there are other
13 compelling reasons for declining jurisdiction.” 29 U.S.C. §1367(c)(4). “[P]endant
14 jurisdiction is a doctrine of discretion, not of plaintiff’s right.” *City of Chicago v.*
15 *Int’l College of Surgeons*, 522 U.S. 156, 172 (1997). Subject matter jurisdiction
16 over Plaintiff’s state law claims rests upon supplemental jurisdiction pursuant to 28
17 U.S.C. § 1367(a).

18 There are compelling reasons for declining to exercise supplemental juris-
19 diction over these state law claims, which seek remedies that Congress clearly in-
20 tended to preclude under the ADA. The fact that an ADA violation may serve as an
21 element of state law claim does not automatically confer federal question jurisdic-
22 tion. *Pickern, supra*, 194 F.Supp.2d at 1131. “Unlike the California Disabled Per-
23 sons Act and the Unruh Civil Rights Act, both of which provide damages for viola-
24 tions, the only remedy available to a private plaintiff under the ADA is injunctive
25 relief.” 42 U.S.C. §12188(a)(2). *Id.* Plaintiff’s remaining claims do not present a
26 federal question. *See Wander v. Kaus*, 304 F.3d 856, 859-60 (9th Cir. 2002) (ADA-
27 based state law claims seeking damages do not give rise to federal question juris-
28 diction). Nor is there a claim of diversity jurisdiction with attendant minimum
amount in controversy. *See* 28 U.S.C. §1332. Where the only federal claim-based

1 cause of action is moot and should be dismissed, comity and fairness strongly fa-
 2 vor dismissal of the remaining state law claims. *See United Mine Workers v.*
 3 *Gibbs*, 383 U.S. 715, 727 (1966) (“[n]eedless decisions of state law should be
 4 avoided both as a matter of comity and to promote justice between the parties, by
 5 procuring for them the surer-footed reading of the law.”)

6 The Court may consider whether declining to exercise jurisdiction serves the
 7 principles of economy, convenience, fairness and comity. *City of Chicago, supra*,
 8 522 U.S. at 172-3 (1997). The principle of comity strongly favors dismissing the
 9 state law claims. *See Executive Software N. Am., Inc. v. United States Court for*
 10 *Central District of Cal.*, 24 F.3d 1545, 1553 (9th Cir. 1994) (“When novel issues
 11 of state law are presented, though, considerations of judicial economy are not de-
 12 terminative.”) (quoting *Gingerich v. White Pigeon Community Schs.*, 736 F.Supp.
 13 147, 149-51 (W.D.Mich.1990)).

14 In deciding whether to exercise supplemental jurisdiction, a court must con-
 15 sider the underlying objective of “most sensibly accommodating the values of
 16 economy, convenience, fairness, and comity.” *Exec. Software, supra*, 24 F.3d at
 17 1557 (internal quotations omitted). A district court need not “articulate why the
 18 circumstances of [the] case are exceptional” to dismiss state-law claims pursuant to
 19 28 U.S.C. section 1367(c)(1)-(3). *San Pedro Hotel Co., Inc. v. City of L.A.*, 159
 20 F.3d 470, 478-79 (9th Cir. 1998) (quoting *Exec. Software*, 24 F.3d at 1557).

21 “[I]n the usual case in which all federal-law claims are eliminated before
 22 trial, the balance of factors to be considered under the pendent jurisdiction doc-
 23 trine—judicial economy, convenience, fairness, and comity—will point toward de-
 24 clining to exercise jurisdiction over the remaining state-law claims.” *Carnegie–*
 25 *Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). As one court observed:

26 State court is no less convenient than the instant forum, and it certain-
 27 ly not unduly burdensome or unfair to dismiss a case that, while ad-
 28 vanced in stage, has required almost no actual litigation. Comity
 weighs strongly in favor of dismissal, given the fact that only state
 law claims remain, and these issues potentially raise important ques-

tions of California law. See *Org. for Advancement of Minorities with Disabilities v. Brick Oven Rest.*, 406 F. Supp. 2d 1120, 1130 (S.D. Cal. 2005).

Rogers v. Irvine Co. LLC, No. SA CV 13-0638-DOC(ANx), 2014 WL 2865699, at *2 (C.D. Cal. June 24, 2014)

The case is in the early stages. No discovery has been propounded. No depositions have yet been taken. Trial is not even scheduled. Plaintiff can hardly claim that he is deeply invested in litigating in this forum.

“This is thus not a situation in which significant resources were expended in federal court and dismissal would require a new judge to develop familiarity with a complex factual situation.” *Rogers* at *2. This is not a situation where familiarity with complex factual situations has already been developed. There can be no showing of extraordinary circumstances to justify retaining jurisdiction over the state law claims. Accordingly, this Court should decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367 over the remaining state law claims.

B. State Claims that Predominate the Litigation Warrant Declining to Exercise Supplemental Jurisdiction in this Case

Plaintiff’s state-law claims substantially predominate over Plaintiff’s ADA claim. Firstly, California has its own set of public accommodation accessibility standards that can provide the basis for liability for disability discrimination in addition to ADA standards. See *Moeller v. Taco Bell Corp.*, No. C02-05849, 2007 WL 2301778, at *6 (N.D. Cal. Aug. 8, 2007) (“A violation of a California Standard constitutes a violation of both the CDPA and the Unruh Act.”).

Secondly, Plaintiff’s timing strongly suggests that he had little interest in removing barriers – giving no notice of his concerns at any time prior to filing the complaint. Rather, the only interest demonstrated by Plaintiff’s filing the amended complaint was to pursue monetary claims and fees, matters best left to state court.

Thirdly, Plaintiff alleges intentional disability discrimination (Complaint, ¶37) (“obvious and blatant nature of the barriers”), a claim unnecessary to his ADA claim. *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 846 (9th

1 Cir. 2004); see *Earll v. eBay, Inc.*, 5:11-cv-00262, 2011 WL 3955485, at *3 (N.D.
 2 Cal. Sept. 7, 2011) (quoting *Munson v. Del Taco, Inc.*, 46 Cal. 4th 661, 668
 3 (2009)). Determination of intentional discrimination entails application of state-law
 4 standards. See *id.* Accordingly, a determination of Defendants' liability for state-
 5 law disability discrimination involves predominantly state-law issues. Cf. *Gibbs*,
 6 383 U.S. at 726 (noting that where "state issues substantially predominate, whether
 7 in terms of proof, of the scope of the issues raised, or of the comprehensiveness of
 8 the remedy sought, the state claims may be dismissed without prejudice and left for
 9 resolution to state tribunals")

10 Finally, Plaintiff's state-law claims provide more expansive remedies than
 11 Plaintiff's ADA claim. Plaintiff seeks damages unavailable under the ADA, but
 12 available under the Unruh Civil Rights Act. Compare *Wander*, 304 F.3d at 858
 13 (noting that damages are not available under Title III of the ADA) with CAL. CIV.
 14 CODE §52(a) (authorizing damages under the Unruh Civil Rights act).

15 C. State Court Provides a More Efficient Forum for Plaintiff's State 16 Law Claims

17 California Civil Code §52.2 gives the California Small Claims Court specif-
 18 ic jurisdiction of disabled access claims under Civil Code §52 and §54.3. Addi-
 19 tionally, California Code of Civil Procedure §1033(b) creates strong incentives for
 20 plaintiffs to file in the most economical level of California's tiered jurisdictional
 21 classifications (Small Claims [Limited Civil under \$10,000], Limited Civil [under
 22 \$25,000], and Unlimited Civil [over \$25,000. (CAL. CODE CIV. PROC. §1033(b)
 23 (limiting or eliminating an award of costs where a lawsuit is "over-filed" and the
 24 plaintiff fails to obtain a damage award above the jurisdictional minimum). Given
 25 the existence of this "tiered" system of litigation in state court, it would likely be
 26 less costly to the parties if Plaintiff's state-law claims are litigated in state court.

27 V. 28 CONCLUSION

If this lawsuit is about removing barriers, they were removed. If it is about

1 litigating state claims, the better question is perhaps whether this Plaintiff should
2 have brought them in the first instance.

3 For the foregoing reasons, Defendant respectfully submits that its motion to
4 dismiss the federal claim should be GRANTED and that this Court DECLINE TO
5 EXERCISE SUPPLEMENTAL JURISDICTION over Plaintiff's state claims.

6
7 Dated: February 10, 2020

LAW OFFICES OF STEPHEN ABRAHAM

8
9 By: /s/ Stephen E. Abraham

10 Stephen E. Abraham

11 Attorneys for Defendant
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is: 1592 Pegasus Street, Newport Beach, California 92660.

On February 10, 2020, I served the foregoing document described as:
**DEFENDANTS' NOTICE OF MOTION AND MOTION TO (A) DISMISS
FEDERAL CLAIM PURSUANT TO FRCP 12(b)(1); AND (B) TO DISMISS
STATE CLAIMS PURSUANT TO FRCP 12(b)(1), 12(h)(3), and 28 USC
§1367(c)** thereon on all interested parties in this action as follows:

CENTER FOR DISABILITY ACCESS Representing Plaintiff
Amanda Seabock, Esq., SBN 289900
Chris Carson, Esq., SBN 280048
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☒ **e-Filing pursuant to Court order**

Executed on February 10, 2020, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Stephen E. Abraham

Stephen E. Abraham